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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,744	03/30/2000	Edward Jason White	KCC-14,867	8894

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT PAPER NUMBER

1771

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/538,744

Applicant(s)

WHITE ET AL.

Examiner

John J. Guarriello

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 29-46 is/are pending in the application.
- 4a) Of the above claim(s) 29-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 39-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

15. The Examiner acknowledges the amendment of 7/28/2003.
16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
17. It is the Examiner's position that the new claims submitted, 43-46, are directed to the previously elected group.

### ***Specification***

18. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is a lack of proper antecedent basis to the instant specification. The drawings are not in the specification. Figure 2 is an inaccurate representation for the argument of the claimed invention. Figures 4 and 5 represent the embodiments of the claimed invention in the instant specification.

### ***Claim Rejections - 35 USC § 102***

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

20. Claims 1, 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Holtman 4,578,070.

Holtman describes an absorbent structure with corrugated (which correspond to the claimed loops see Figure 2) web layers, (see abstract). Holtman describes the fibrous layer in the form of a non-woven web which is corrugated in structure, identical to the loops, (Figure 2), or fibers, and identical to a z-direction, x-direction, and a y-direction of the claimed invention, (see Figures 2, 3A, and 3, column 2, lines 35-48). Holtman describes absorbent products corresponding to the claimed personal care product which are diapers, sanitary napkins, (column 3, lines 58-66; column 5, lines 50-53), and incontinent pads, (column 4, lines 40-43; Figure 3). Holtman

describes a fibrous web with high loft, (column 5, lines 15-17). It is the Examiner's position that Holtman describes the essential limitations of the claimed invention. Claims lack novelty.

Applicant's arguments regarding the looped fibers have been considered, but it is the Examiner's position that no differential in distances from successive loops evidenced in the claim language as to distinguish from the loops of Holtman as shown in Figures 2, 6, and 8. Claims lack novelty.

***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 2-14, 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtman 4,578,070 in view of EP 137 644.

Holtman describes an absorbent structure with corrugated (which corresponds to the claimed loops and has channels between

the loops, see Figure 2) web layers, (see abstract). Holtman describes the fibrous layer in the form of a non-woven web which is corrugated in structure, corresponding to the claimed loops and the claimed channels between the loops, see Figure 2, or fibers, and identical to a z-direction, x-direction, and a y-direction of the claimed invention, (see Figures 2, 3A, and 3, column 2, lines 35-48).

Holtman describes absorbent products corresponding to the claimed personal care product which are diapers, sanitary napkins, (column 3, lines 58-66; column 5, lines 50-53), and incontinent pads, (column 4, lines 40-43; Figure 3). Holtman describes a fibrous web with substantially high loft, (column 5, lines 15-17). Holtman differs from the claimed invention because it is silent about the channels being randomly spaced in the machine direction.

EP'644 describes loops defining the open spaces between the webs which are elliptical in shape and exemplify the claimed channels in the machine direction, see Figures 10 and 12 on page 4 of the Figure pages.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the non-woven web fibrous layer orientation of '070 with the second fibrous layer of EP'644 so as to exemplify the channels in the machine direction which correspond to an elliptical shape, see Figure 3A, elements 32A of Holtman '070, of the claimed invention motivated with the expectation EP'644 describes open spaces between the webs as shown in Figures 10 and 12, and that the rearranging the parts (corresponding to the layers of the fibrous materials in spatial relationship to each other) of an invention only involves routine skill in the absorbent article art in order to achieve properties of improved absorbence, see *In re Japikse*, 86 USPQ 70.

Applicant's arguments, as noted in the response 7/24/2002, regarding the process limitation indicates a process-by-product consideration. Product-by-process claims are treated as products unless there is clear evidence to the contrary. Since the product, as now amended in newly amended independent claim 2, appears to be the same or similar as the prior art of record it still would be obvious

to one of ordinary skill in the art taking the invention as a whole. Moreover, with the language of channels in the instant claims, Figures 2, 6, and 8 of Holtman '070 describe channels, and with no criticality of depth or width in the claims of the instant invention the claimed invention would still be obvious to one of ordinary skill in the art. Regarding the intended use as a filter this would be obvious to one of ordinary skill since Berrigan describes undulations transverse to webs for filter media, (column 1, lines 63-67).

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

January 18, 2004



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SUPERVISORY PATENT EXAMINER  
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